

51 Am. Jur. 2d Licenses and Permits § 6

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Licenses and Permits


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I. Definition and Nature of License

§ 6. Construction of laws

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Licenses](#)  1, 8(1), 36

Courts cannot construe a statute to confer implicit authority to license an occupation when such a construction would contravene the legislature's apparently deliberate failure to explicitly grant such authority.¹ Rather, the only authority which may be implied to license an occupation must stem from the state's police power.²

In construing a license tax law, courts regard the substance and purpose of the law rather than its form and language.³ In general, any doubt as to the meaning and scope of language imposing a license tax should be resolved in favor of the taxpayer.⁴ Similarly, penal statutes involving licensure are construed in favor of the licensee and against the regulatory authority.⁵

Where a licensing statute is enacted pursuant to a state's police powers,⁶ the legislative intent is that the law be interpreted broadly⁷ so that particular licensees are not able easily to evade the statute's protective purposes.⁸ Stated conversely, in some jurisdictions the language in licensing statutes must be strictly construed against a person claiming an exemption therefrom.⁹

If the purpose of a licensing statute is not to punish but to protect consumers and the public who deal with members of a particular profession or trade, the statute is considered nonpenal.¹⁰ Although an agency generally has wide discretion in interpreting a statute it administers, this discretion is somewhat more limited where the statute being interpreted authorizes sanctions or penalties against a person's professional license.¹¹

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Footnotes

¹ [In re 1994 and 1995 Shoreline Imp. Contractor Licenses of Landview Landscaping, Inc., 546 N.W.2d 747 \(Minn. Ct. App. 1996\).](#)

² [§ 9.](#)

³ [Estes v. City of Richmond, 193 Va. 181, 68 S.E.2d 109 \(1951\).](#)

For a general discussion of the validity of licensing statutes under various constitutional provisions, see *Am. Jur. 2d, Constitutional Law* §§ 456, 550, 565.

4 *Treat v. White*, 181 U.S. 264, 21 S. Ct. 611, 45 L. Ed. 853 (1901); *City of Sedalia ex rel. and to Use of Ferguson v. Shell Petroleum Corp.*, 81 F.2d 193, 106 A.L.R. 1327 (C.C.A. 8th Cir. 1936); *Davison v. F. W. Woolworth Co.*, 186 Ga. 663, 198 S.E. 738, 118 A.L.R. 1363 (1938); *Young v. Town of Vienna*, 203 Va. 265, 123 S.E.2d 388, 93 A.L.R.2d 86 (1962); *Coordinating Council for Independent Living, Inc. v. Palmer*, 209 W. Va. 274, 546 S.E.2d 454 (2001).

5 *Djokic v. Department of Business and Professional Regulation, Div. of Real Estate, State of Fla.*, 875 So. 2d 693 (Fla. Dist. Ct. App. 4th Dist. 2004).

6 § 9.

7 *In re McNeal*, 286 B.R. 910 (Bankr. N.D. Cal. 2002) (applying California law); *Kaplan v. Tabb Associates, Inc.*, 276 Ill. App. 3d 320, 212 Ill. Dec. 720, 657 N.E.2d 1065 (1st Dist. 1995); *Burns v. Board of Nursing of State of Iowa*, 528 N.W.2d 602 (Iowa 1995).

8 *Hughes v. Board of Architectural Examiners*, 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).

9 *Brimer v. Arkansas Contractors Licensing Bd.*, 312 Ark. 401, 849 S.W.2d 948 (1993); *Far East Services Corp. v. Tracker Marine, L.L.C.*, 246 S.W.3d 486, 64 U.C.C. Rep. Serv. 2d 584 (Mo. Ct. App. S.D. 2007); *Quick Start Const. Corp. v. Staiger*, 77 A.D.3d 900, 910 N.Y.S.2d 131 (2d Dep't 2010); *Coordinating Council for Independent Living, Inc. v. Palmer*, 209 W. Va. 274, 546 S.E.2d 454 (2001).

10 *Hughes v. Board of Architectural Examiners*, 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998); *Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997) (purpose is regulation rather than imposition of liability). As to revocation as nonpenal in nature, see § 58.

11 *Kany v. Florida Engineers Management Corp.*, 948 So. 2d 948 (Fla. Dist. Ct. App. 5th Dist. 2007).